RECENT IMPORTANT DECISIONS.

ADVERSE POSSESSION—COLOR OF TITLE DEPENDING ON GOOD FAITH.—Where a party claimed title to land by constructive adverse possession, he having made a deed to a trustee for himself of land which he did not own, occupy, or have any interest in, *held,* that his fraud had denied the deed the virtue, force and effect of color of title in his hands. *State* v. *King* (W. Va., 1915) 87 S. E. 170.

This case supports the rule that a person in possession of land under color of title, in order to have the benefit of constructive adverse possession, must have entered and held such land in good faith, believing the instrument giving him color of title to be valid. This is decidedly the majority rule in the United States. See *Reay* v. *Butler,* 95 Cal. 206; *Lee* v. *O'Quin,* 103 Ga. 355; *Ege* v. *Medlar,* 82 Pa. St. 86; *Chandler* v. *Spear,* 22 Vt. 388; *Bowman* v. *Wettig,* 39 Ill. 416; *Smith* v. *Young,* 89 Ia. 338. Dictum to this effect is found in *Wilson* v. *Atkinson,* 77 Cal. 485 and in *Baker* v. *Lessee of Swan,* 32 Md. 355. However, some courts have held that it is immaterial whether or not the adverse possessor entered the land believing in his "paper" title. See *Reddick* v. *Leggat,* 7 N. C. 39 and *Lampman* v. *Van Alystyne,* 94 Wis. 417. See note in 15 L. R. A. (N. S.) 1254-5.

BANKRUPTCY—APPOINTMENT OF RECEIVER BECAUSE OF INSOLVENCY.—A state court, upon the application of creditors and stockholders, appointed a receiver of respondent corporation. The complaint in the state court alleged, and the answer admitted, that the corporation was in imminent danger of insolvency. This ground was sufficient, under the state statute, for the appointment of a receiver. The District Court held this to be an act of bankruptcy under § 3a (4) of the Bankruptcy Act. The Circuit Court of Appeals *held* that there is no act of bankruptcy unless it is shown in the bankruptcy court that the respondent was actually insolvent, as defined by § 1 (15) at the time the receiver was appointed; and the case was remanded to the District Court to determine that fact. *Maplecroft Mills* v. *Childs et al.* (C. C. A. 1915), 226 Fed. 415.

One has committed an act of bankruptcy under § 3a (4) if "because of insolvency a receiver or trustee has been put in charge of his property under the laws of a State * * *." The District Court held that the appointment of a receiver, either because insolvency is actual or because insolvency is imminent, is an appointment "because of insolvency." *In re Maplecroft Mills,* 218 Fed. 695. But it is generally held that inability to meet one's maturing debts is not enough; the appointment is not "because of insolvency" unless it is because, in the language of § 1 (15), the alleged bankrupt's property is "not, at a fair valuation, * * * sufficient in amount to pay his debts." *In re Commonwealth Lumber Co.,* 223 Fed. 667; *In re Val. Bohl Co.,* 224 Fed. 685; *In re Butte-Duluth Min. Co.,* 227 Fed. 334; *In re Golden Malt Cream Co.,* 164 Fed. 326; *In re Aldrich Co.,* 165

Fed. 240; *In re Ellsworth Co.*, 173 Fed. 699; *In re Douglas Coal Co.*, 131 Fed. 769; *In re Boston & Oaxaco Mining Co.*, 181 Fed. 422; *Hooks* v. *Aldridge*, 145 Fed. 864; *In re Butler & Co.*, 207 Fed. 705, 125 C. C. A. 223. A dissenting opinion in the last case contends that, as the provision in § 3a (4) relates to proceedings in courts of common law and equity, its language is the language of those courts, and "insolvency" means, as it means in such courts, inability to meet one's debts as they mature. *Beatty* v. *Anderson Coal Mining Co.*, 150 Fed. 293 seems to accord with this dissenting opinion. The action of the court in the principal case (p. 419, 420) in remanding the case to the District Court so that it may hear evidence and submit to a jury the question whether the respondent was actually insolvent when the receiver was appointed, seems clearly wrong. If, as the court decides, the state court's action was not based on actual insolvency as defined by § 1 (15), how will the District Court's possible finding of such insolvency show that the receiver was *appointed* because of insolvency? And if the state court's action was "because of" insolvency as thus defined, do we not have the act of bankruptcy, even though the District Court might disagree with the state court's finding of the fact of insolvency? In *In re Ellsworth Co.*, supra; *In re Boston & Oaxaca Mining Co.*, supra; *In re Spalding*, 139 Fed. 244; and *Moss Nat. Bk.* v. *Arend*, 146 Fed. 351, the position was taken that the bankruptcy courts were not concerned, in cases of this kind, with the question of *actual* insolvency at the time of the state court's appointment of the receiver; actual solvency or insolvency is immaterial, so long as the state court's action was "because of" such insolvency as is defined in § 1 (15). The same view is expressed in REMINGTON, BANKRUPTCY (2 ed.) § 155. There seems to be no justification in the statute for the practise, referred to in *In re Pickens Mfg. Co.*, 158 Fed. 894, on the authority of *Blue Mtn. Co.* v. *Portner*, 131 Fed. 57 and *In re Belfast Mesh Underwear Co.*, 153 Fed. 224, of allowing a hearing in the bankruptcy court on the question whether insolvency existed at the time of the state court's appointment of the receiver.

BANKRUPTCY—EQUITABLE LIEN OR VOIDABLE PREFERENCE.—Defendant advanced money to an insolvent partnership under an agreement, made in good faith, which created an equitable lien for him on brick to be manufactured by the firm. Defendant took possession of the brick when manufactured within four months of the bankruptcy of the firm, whose trustee in bankruptcy contended that this constituted a preferential transfer and was voidable within the bankruptcy act making transfers by insolvents within four months before bankruptcy voidable preferences. *Held* that defendant took possession of the brick in satisfaction of an equitable lien which related back to the date of the contract creating same and hence the transfer was not within four months before bankruptcy. *Sieg* v. *Greene*, (C. C. A. 1915), 225 Fed. 955.

The agreement or facts necessary to create an equitable lien must show an intention to create a lien. *A. T. & S. F. Ry Co.* v. *Hurley*, 153 Fed. 503, 82 C. C. A. 453. An equitable lien may attach to property to be created